

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	CASE NO. 1:17-CR-50
)	
)	
PLAINTIFF,)	JUDGE SARA LIOI
)	
vs.)	
)	MEMORANDUM OPINION AND
)	ORDER
ADAM D. BOYLEN,)	
)	
)	
DEFENDANT.)	

On September 5, 2017, defendant Adam Boylen (“Boylen”) was sentenced to an aggregate term of 42 months of imprisonment on multiple counts of violating the Clean Water Act, 33 U.S.C. § 1251, *et seq.* (Doc. No. 26 (Judgment); Doc. No. 27 (Amended Judgment) (9-12-17).) On September 15, 2017, Boylen filed a notice of appeal to the Sixth Circuit Court of Appeals. (Doc. No. 28 (Notice).) Boylen’s direct appeal remains pending in the Sixth Circuit.

Presently before the Court is a document filed by Boylen styled “Motion for Leave of Judicial Notice.” (Doc. No. 34.) In this filing, Boylen claims that the “Clean Water Act h[as] no application to the facts of this case[.]” (*Id.* at 241.) He seeks an order from this Court “requiring the indictment in this matter [to] be quashed and [his] immediate discharge and release[.]” (*Id.* at 242.) Because Boylen is challenging the legality of his conviction, his filing is most appropriately characterized as a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. *See United States v. Peterman*, 249 F.3d 458, 461 (6th Cir. 2001) (“Section 2255

is the primary avenue for relief for federal prisoners protesting the legality of their sentence”).

Because Boylen’s direct appeal is not final, the rule announced in *Capaldi v. Pontesso*, 135 F.3d 1122 (6th Cir. 1998) applies, and the Court must deny the motion without prejudice. In *Capaldi*, the Sixth Circuit held that “in the absence of extraordinary circumstances, a district court is precluded from considering a § 2255 application for relief during the pendency of the applicant’s direct appeal.” *Id.* at 1124 (collecting cases). “An application under § 2255 is an extraordinary remedy and should not be considered a substitute for direct appeal. Moreover, determination of the district appeal may render collateral attack by way of a § 2255 application unnecessary.” *Id.* (citation omitted); *see also* Rules Governing Section 2255 Proceedings for the United States District Courts, Rule 5, Adv. Comm. Notes (advising that while “there is no jurisdictional bar to the District Court’s entertaining a Section 2255 motion during the pendency of a direct appeal[,] . . . the orderly administration of criminal law precludes considering such a motion absent extraordinary circumstances”) (quoting *Womack v. United States*, 395 F.2d 630, 631 (D.C. Cir. 1968)); *Joy v. United States*, No. 16-6494, 2017 WL 4513119, at *2 (6th Cir. Mar. 20, 2017) (The “*Capaldi* rule is not jurisdictional, but rather was adopted by this and other courts to promote judicial economy and the orderly administration of justice”) (citations omitted). “Whether extraordinary circumstances exist is a question the answer to which depends upon the balancing of the need for speedy relief against the need for conservation of judicial resources.” *United States v. Davis*, 604 F.2d 474, 485 (7th Cir. 1979).

Boylen has failed to argue the existence of extraordinary circumstances that would warrant consideration of his § 2255 motion during the pendency of his direct appeal, and the

Court can find none. Accordingly, the Court shall dismiss the present motion without prejudice. *See, e.g., United States v. Pierce*, No. 5:14-056-DCR-1, 5:16-035-DCR, 2016 WL 782393, at *2 (E.D. Ky. Feb. 29, 2016) (relying on *Capaldi* and dismissing without prejudice a § 2255 motion filed during the pendency of defendant's direct appeal).

Further, Boylen may not appeal this Court's decision without the issuance of a certificate of appealability ("COA"). 28 U.S.C. § 2253(c)(1)(B); Fed. R. App. P. 22(b). Because the Court finds that no reasonable jurists would find its conclusion that Boylen's § 2255 motion should not be addressed during the pendency of his direct appeal debatable, a certificate of appealability will be denied.

For all the foregoing reasons, Boylen's motion (Doc. No. 34) is DENIED WITHOUT PREJUDICE. Further, the Court finds, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

Dated: April 30, 2018



HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE